



Infrastructure You Can Rely On™

## Cloud Propeller, Inc. – MASTER SERVICES AGREEMENT

Last Update: January 1, 2017

This Master Services Agreement (“MSA”), dated as of **sign-up date** (via my.cloudpropeller.com portal or other means), is by and between the person/organization signing up for Cloud Propeller Services and **Cloud Propeller, Inc.**, an Ohio corporation with an office located at 565 Metro Place South, Suite 300, Dublin, Ohio 43017 (“CLOUD PROPELLER”).

WHEREAS CLOUD PROPELLER offers certain information technology services (the “**Services**”); and

WHEREAS Client desires to engage CLOUD PROPELLER to provide to Client and its affiliates certain of such Services.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the covenants and conditions set forth herein, Client and CLOUD PROPELLER hereby agree as follows:

### 1. BACKGROUND; DEFINITIONS.

- 1.1. **Background.** CLOUD PROPELLER shall provide, and Client shall accept, the Services as set forth and described in SERVICE ORDER FORM executed from time to time by CLOUD PROPELLER and Client referencing this Agreement (“**SOF**”), subject in each instance to the terms and conditions of such SOF and the terms and conditions of this Agreement. CLOUD PROPELLER shall have no obligation to provide any product or perform any service except as set forth in a SOF that has been executed by authorized representatives of CLOUD PROPELLER and Client.
- 1.2. **Incorporation; Precedence.** The terms and conditions of this MSA shall be deemed to be incorporated into and to govern each and every SOF. If any provision of the Terms of Use, any other terms of use or rules of CLOUD PROPELLER or any SOF conflicts with, or covers the same or similar substance as, provisions of this MSA, the relevant terms of the Terms of Use or other such use or rules of CLOUD PROPELLER shall govern, but only to the extent that the Terms of Use or other such terms of use or rules of CLOUD PROPELLER do not create additional material obligations or liabilities for the Client. If any provision of any SOF conflicts with, or covers the same or similar substance as, provisions of this MSA, the relevant terms of this MSA shall govern, except to the extent such SOF expressly provides that it takes precedence of this MSA.
- 1.3. **Construction.** As used herein, the term “this Agreement” refers collectively to this MSA and any SOFs, including exhibits or other attachments thereto.
- 1.4. **Terms of Use.** Subject to **Section 1.2** above, Client will comply with the Terms of Use, as defined and set forth on the website provided by CLOUD PROPELLER with a homepage located at URL <http://cloudpropeller.com> (or any successor or replacement thereto) (the “**Terms of Use**”). Subject to **Section 1.2** above, the terms and conditions described in this Agreement shall supersede and not be superseded by the Terms of Use. Notwithstanding anything to the contrary in this Agreement, no future changes to the Terms of Use or any other terms of use or rules of CLOUD PROPELLER that create any additional material obligations or liabilities for the Client shall be applicable to the Client without its written consent to such changes.
- 1.5. **Definitions.** The following terms when capitalized shall have the meanings set forth in this **Section 1.5**:

“**Client System**” shall mean collectively any Client system, network or process of Client that may be connected to, run on, or is used in connection with the CLOUD PROPELLER Infrastructure.

“**CLOUD PROPELLER Infrastructure**” shall mean collectively any CLOUD PROPELLER systems, networks and processes that may be incorporated into or a part of the Services, to the extent under the operational control of CLOUD PROPELLER.

## 2. CLOUD PROPELLER INFRASTRUCTURE.

- 2.1. **Use of Services.** Client may utilize any of the Services made available to Client pursuant to a SOF that Client deems appropriate; provided such use is in accordance with the terms and conditions of this Agreement.
- 2.2. **Anticipated Business.** Upon CLOUD PROPELLER's reasonable request, Client shall promptly provide any necessary details regarding the business Client anticipates transacting through the CLOUD PROPELLER Infrastructure.
- 2.3. **Monitoring.** CLOUD PROPELLER reserves the right, but not the obligation, to monitor any or all activities, data, or other information transmitted through the CLOUD PROPELLER Infrastructure. CLOUD PROPELLER further reserves the right to reject, suspend, censor or prohibit any transmission through the CLOUD PROPELLER Infrastructure that CLOUD PROPELLER, in its reasonable discretion, determines in good faith may be prohibited by law or otherwise violates this Agreement. CLOUD PROPELLER shall promptly notify Client of any such action taken by CLOUD PROPELLER unless prohibited by law.
- 2.4. **Client Transaction Terms and Conditions.** The specific terms and conditions regarding Client's (i) transactions with its customers and suppliers conducted through the CLOUD PROPELLER Infrastructure, or (ii) receipt of services from its customers and suppliers arranged through the CLOUD PROPELLER Infrastructure (e.g. pricing, warranties, indemnities, etc.) shall be established between Client and its supplier or customer. Client acknowledges that CLOUD PROPELLER takes no responsibility for the terms and conditions Client establishes with its customers and suppliers.
- 2.5. **Transacting Parties.** Client is solely responsible for selecting and designating the parties with which it will do business. CLOUD PROPELLER shall have no responsibility for the services of Client or its customers, nor shall CLOUD PROPELLER be responsible for compliance with the terms of any purchase order or other agreement that Client executes with a customer or supplier. CLOUD PROPELLER is not a party to, or third party beneficiary of, any contract, express or implied, between Client and its customers and suppliers, nor is CLOUD PROPELLER a guarantor of performance under such contract.
- 2.6. **Information Transmitted Through the CLOUD PROPELLER Infrastructure by Clients.** CLOUD PROPELLER makes no representations or warranties regarding the content of messages transmitted by users through the CLOUD PROPELLER Infrastructure. Client is solely responsible for the information that it transmits through the CLOUD PROPELLER Infrastructure.
- 2.7. **Modifications.** Client acknowledges that CLOUD PROPELLER may, without prior notice, add, delete or modify some or all of the Services at any time, provided that any changes shall not materially degrade or diminish the Services. Any such change shall be applicable to all CLOUD PROPELLER users. Notwithstanding the foregoing, CLOUD PROPELLER will provide thirty (30) days notice of any material change to the CLOUD PROPELLER Infrastructure to Client prior to the effective date of such change.
- 2.8. **Malicious Intent.** Client agrees not to knowingly tamper with the software or functionality of the CLOUD PROPELLER Infrastructure or the Services.

## 3. PRIVACY AND SECURITY.

CLOUD PROPELLER shall maintain appropriate security measures in connection with the CLOUD PROPELLER Infrastructure, and Client shall maintain appropriate security measures in connection with the Client System. Without limiting the foregoing, Client shall take appropriate security measures to protect any passwords or user IDs provided to Client for use with the CLOUD PROPELLER Infrastructure from any unauthorized use and shall ensure that only the individual to whom the password and/or user ID is issued makes use of the same. In the event such individual no longer is employed by Client or is otherwise no longer authorized to make use of the CLOUD PROPELLER Infrastructure on behalf of Client, Client shall promptly notify CLOUD PROPELLER of such fact. Client acknowledges that it is responsible for all transactions made by its agents, employees and representatives using such passwords and/or user IDs. CLOUD PROPELLER's obligations regarding privacy are set forth in **Section 6** and in CLOUD PROPELLER's Privacy Policy available on the Site. In the event the terms of this Agreement and CLOUD PROPELLER's Privacy Policy conflict, the terms of this Agreement shall govern.

## 4. CLIENT RESPONSIBILITIES.

**4.1. Responsibility for Personnel and Client Customers.** Client shall be responsible for the actions of its personnel, subcontractors, agents, end users, and clients in connection with their or Client's obligations under this Agreement.

**5. FEES; TAXES.**

**5.1. Fees and Payment.** In consideration for the Services, Client shall pay CLOUD PROPELLER the fees and charges set forth in each SOF. Except as such SOF provides to the contrary, Client shall pay to CLOUD PROPELLER any and all amounts for which Client is invoiced within thirty (30) days of Client's receipt of such invoice. At CLOUD PROPELLER's discretion, a late fee of the lesser of (i) one and one-half percent (1.5%) per month, or (b) the maximum monthly equivalent amount allowed by law, may be assessed on all late payments.

**5.2. Taxes.** Client shall pay CLOUD PROPELLER the full amounts set forth in each SOF with no reduction for Applicable Taxes to be paid by Client and Client shall reimburse CLOUD PROPELLER for any Applicable taxes paid by CLOUD PROPELLER on Client's behalf. For the purposes of this Agreement, "Applicable Taxes" shall mean all taxes or charges (including penalties and interest) of a government or political subdivision thereof, except taxes on the net income or profits of CLOUD PROPELLER. Applicable Taxes shall include, but not be limited to, excise, customs, sales, use, VAT, GST and consumption taxes. Client shall pay and bear the cost of all Applicable Taxes assessed, paid, charged or levied with regard to its use of the Services.

**5.3. Expenses.** Client shall reimburse CLOUD PROPELLER for reasonable travel and out-of-pocket expenses incurred by CLOUD PROPELLER and its consultants in connection with the performance of an applicable SOF (excluding the expenses incurred in providing the basic services in accordance with the terms of the applicable SOF).

**6. CONFIDENTIALITY.**

**6.1. Definition.** CLOUD PROPELLER and Client recognize that each may provide to the other Confidential Information (as hereinafter defined) in connection with its use or provision of the Services. As used in this Agreement, "**Confidential Information**" shall mean any information disclosed by one party to the other party under this Agreement (i) in written or electronic form that is marked "confidential" or "proprietary" at the time of disclosure, (ii) in oral or visual form, provided that such information is summarized in writing and marked "confidential" or "proprietary" and such summary is sent to the receiving party within thirty (30) days following such oral or visual disclosure, and (iii) data and information transmitted by Client over the CLOUD PROPELLER Infrastructure. CLOUD PROPELLER and Client hereby agree that Confidential Information shall be used and disclosed only upon the terms and conditions set forth herein. The parties agree that all pricing and all other business terms of this Agreement and any SOF are deemed Confidential Information.

**6.2. Obligations.** Each party that receives Confidential Information from the other shall use the same care and discretion to avoid disclosure, publication or dissemination of such Confidential Information received from the disclosing party as the receiving party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). CLOUD PROPELLER and Client shall use the other party's Confidential Information solely in connection with its use or performance of the Services, provided that CLOUD PROPELLER may also use Client's Confidential Information internally in its operation of the CLOUD PROPELLER Infrastructure, including, but not limited to, use of such information to develop new or tailored Services. CLOUD PROPELLER may also develop aggregate data regarding use of the CLOUD PROPELLER Infrastructure and nothing within this **Section 6** shall restrict CLOUD PROPELLER's ownership rights in such aggregate data or CLOUD PROPELLER's use thereof. In the event of the termination or expiration of this Agreement, each party shall, upon request of the disclosing party, promptly destroy or return to the disclosing party all Confidential Information of the disclosing party in its possession, provided that receiving party may retain one (1) archival copy of such Confidential Information for use in connection with any dispute that may arise between the parties.

**6.3. Disclosure.** CLOUD PROPELLER and Client shall only disclose Confidential Information received from the other party to those employees, agents, representatives and consultants who have a need to know and who are bound by obligations at least as restrictive as those set forth herein.

**6.4. Exceptions.** The provisions of **Sections 6.2** and **6.3** shall not apply to any Confidential Information that: (i) is or becomes publicly known through no fault of receiving party; (ii) is disclosed to receiving party by a third party entitled to disclose it; (iii) the receiving party can

demonstrate was already known to it prior to receipt from the disclosing party; or (iv) was independently developed by employees of receiving party.

- 6.5. **Mandatory Disclosure.** If any judicial, legislative or administrative body requests or threatens to compel disclosure of Confidential Information, the receiving party shall promptly notify the disclosing party. The receiving party will disclose Confidential Information only if, and to the extent, required by law. The receiving party will, at the disclosing party's expense, reasonably assist the disclosing party in obtaining a protective order and take such other reasonable steps requested by the disclosing party to prevent or minimize the disclosure of any Confidential Information.
- 6.6. **Term.** The obligations of CLOUD PROPELLER and Client with respect to a particular item of Confidential Information shall continue for a period of five (5) years commencing on the date that such item is disclosed.
- 6.7. **No License.** Client and CLOUD PROPELLER acknowledge that neither has granted any rights by license or otherwise to any of the other party's Confidential Information.

## 7. INTELLECTUAL PROPERTY.

Client and CLOUD PROPELLER each acknowledge and agree that all trademarks, trade names or service marks (the "Marks") of one party are and shall remain the sole property of such party and no license or permission to use any Client Marks is granted hereunder except to the extent expressly agreed by the parties. All data (including aggregate data regarding use of the CLOUD PROPELLER Infrastructure) and materials (including any software, code, or other deliverables) created or provided by CLOUD PROPELLER or on CLOUD PROPELLER's behalf in connection with the operation of the CLOUD PROPELLER Infrastructure and/or the provision of the Services, including, without limitation, all proprietary rights inherent therein or appurtenant thereto, shall be the exclusive property of CLOUD PROPELLER and may not be used by Client or disclosed to others without CLOUD PROPELLER's prior express written consent (except as permitted in [Section 6](#) above). Client shall not remove any trademark or copyright notices on such materials and data. Client shall not attempt to decompile, translate, reverse engineer any CLOUD PROPELLER proprietary materials, and shall promptly notify CLOUD PROPELLER of any such attempt, regardless of whether by Client or any third party, of which Client becomes aware. All data and information of the Client or its affiliates and all proprietary rights inherent therein or appurtenant thereto, shall remain the exclusive property of Client and may not be used by CLOUD PROPELLER or disclosed to others without Client's prior express written consent.

## 8. TERM AND TERMINATION.

- 8.1. **Term.** Unless otherwise terminated as set forth in [Section 8.2](#), this Agreement shall remain in effect from the Effective Date until the first anniversary of the first date on which no SOF is then in effect between the Parties.
- 8.2. **Termination for Cause.** Either party may terminate this Agreement in the event the other party materially breaches this Agreement and does not cure such breach within thirty (30) days after its receipt of notice from the non-breaching party; provided, that Client shall have the right to terminate this Agreement immediately to the extent expressly set forth in any SOF. In addition to the right of CLOUD PROPELLER to suspend transmissions granted by [Section 2.3](#), CLOUD PROPELLER further reserves the right to suspend Client's access to the CLOUD PROPELLER Infrastructure and the Services in the event that CLOUD PROPELLER reasonably believes Client is in breach of any applicable law or in material breach of the Agreement. CLOUD PROPELLER will, where feasible given the circumstances, provide advance written notice to Client in the event of such a suspension or, where advance notice is not feasible (e.g., due to Client's breach of applicable law), then promptly after such suspension. Except as expressly provided in this [Section 8.2](#) and [Section 2.3](#), CLOUD PROPELLER has no right to suspend Client's access to the CLOUD PROPELLER Infrastructure and the Services.
- 8.3. **Survival.** All provisions of this Agreement, and the Exhibits incorporated by reference herein, relating to warranties, confidentiality obligations, proprietary rights, limitation of liability, indemnification obligations and payment obligations shall survive the termination or expiration of this Agreement or any SOF.

## 9. REPRESENTATIONS AND WARRANTIES.

- 9.1. **Authority.** Each party represents and warrants that (i) it has the full power and authority to enter into this Agreement, and (ii) the execution of this Agreement by it and the performance of its obligations hereunder do not violate any other agreement by which it is bound.

- 9.2. **Client.** Client represents and warrants that (i) all of the information provided as part of Client's registration, whether provided online or offline, including any response which may be requested online, is true, complete and accurate and that it shall notify CLOUD PROPELLER as soon as practicable of any change that would render such information untrue, incomplete or inaccurate; and (ii) Client is the sole owner or otherwise has the right to use Client's Marks and any data transmitted by Client to the CLOUD PROPELLER Infrastructure.
- 9.3. **CLOUD PROPELLER.** CLOUD PROPELLER represents and warrants that it is the sole owner of or otherwise has the right to use the CLOUD PROPELLER Infrastructure and CLOUD PROPELLER's Marks and any data supplied to Client by CLOUD PROPELLER.
- 9.4. **Disclaimer.** EXCEPT AS PROVIDED IN THIS AGREEMENT, TRANSACTIONS WILL BE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, CLOUD PROPELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, THE CLOUD PROPELLER INFRASTRUCTURE, THE INFORMATION OFFERED THROUGH THE CLOUD PROPELLER NETWORK, OR ANY TRANSACTIONS THAT MAY BE CONDUCTED THROUGH THE CLOUD PROPELLER NETWORK, INCLUDING WITHOUT LIMITATION: (A) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT; (B) THAT THE SERVICES WILL MEET CLIENT'S REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, ACCURATE, SECURE OR OPERATE WITHOUT ERROR; AND (C) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.

## 10. INDEMNIFICATION.

- 10.1. **Client.** Client shall indemnify, defend and hold harmless CLOUD PROPELLER, its officers, affiliates, directors, equity holders, agents and employees from and against and pay any damages, liability, judgments or costs (including reasonable attorneys' fees) arising out of any third party claim, demand, cause of action or suit brought against CLOUD PROPELLER based upon: (i) Client's use of or inability to use the CLOUD PROPELLER Infrastructure or the Services (except to the extent such claim is a result of CLOUD PROPELLER's breach of its obligations under this Agreement); (ii) any breach of Client's representations and warranties hereunder; (iii) any false, misleading, inaccurate or erroneous data provided to CLOUD PROPELLER by Client; (iv) a dispute between Client and its customer or supplier concerning a Transaction or Transactions; (v) Client's misuse or failure to protect the passwords and/or user IDs provided to Client for use with the CLOUD PROPELLER Infrastructure; (vi) infringement of materials, equipment or software that Client provides to CLOUD PROPELLER or that Client uses on the CLOUD PROPELLER Infrastructure; (vii) any infringement of materials, equipment or software provided to CLOUD PROPELLER by Client (including as part of the Services); and (viii) Client's gross negligence, willful misconduct or abandonment. CLOUD PROPELLER may, at its discretion and at its own expense, assist in the defense of any indemnified claim through counsel selected by CLOUD PROPELLER. Any settlement intended to bind CLOUD PROPELLER shall not be valid or binding on CLOUD PROPELLER without CLOUD PROPELLER's prior written consent.
- 10.2. **CLOUD PROPELLER.** CLOUD PROPELLER shall indemnify, defend and hold harmless Client, its officers, affiliates, directors, equity holders, agents and employees from and against and pay any damages, liability, judgments or costs (including reasonable attorney fees) arising out of or in connection with any third party claim, demand, cause of action or suit brought against Client based upon: (i) any breach of CLOUD PROPELLER's representations and warranties hereunder; (ii) any infringement of materials, equipment or software provided to Client by CLOUD PROPELLER (including as part of the Services) and (iii) CLOUD PROPELLER's gross negligence or willful misconduct. Client may, at its discretion and at its own expense, assist in the defense of any indemnified claim through counsel selected by Client. Any settlement intended to bind Client shall not be valid or binding on Client without Client's prior written consent.
- 10.3. **Procedures.** The indemnified party shall promptly notify the indemnifying party of any claims subject to this **Article 10**.

## 11. LIMITATION OF LIABILITY.

- 11.1. Neither party shall be liable for any special, indirect, incidental, punitive or consequential damages (including without limitation for lost profits, revenues or data, even if that party has been advised of the possibility of such damages), arising out of or in connection with this Agreement, the Services or the use of or connection to the CLOUD PROPELLER Infrastructure regardless of whether such damages are caused by the negligence of that party, except for any such special, indirect,

incidental, punitive or consequential damages arising out of or in connection with any willful misappropriation or use in breach of **Sections 6** and **7** of this Agreement.

- 11.2. Except as set forth in **Section 11.3** or in connection with any willful misappropriation or use in breach of **Sections 6** and **7** of this Agreement, in no event shall either party's aggregate liability in connection with this Agreement exceed the total transaction fees (as defined in the SOF) due from Client in the twelve (12) months preceding the breach giving rise to the claim.
- 11.3. The limitations of liability set forth in this **Article 11** do not apply to Client's obligation to pay fees to CLOUD PROPELLER under this Agreement or a SOF.

**12. MISCELLANEOUS.**

- 12.1. **Publicity and Use of Name.** Upon execution of this Agreement, each of Client and CLOUD PROPELLER may issue a press release announcing only the fact that Client and CLOUD PROPELLER have signed an Agreement and intend to do business with one another. If Client or CLOUD PROPELLER wishes to issue a press release containing any additional information, the other party shall have the right to consent to the content of such press release. Except for the foregoing, neither party may publicly use the other party's name without the other party's prior written consent.
- 12.2. **Notice Address.** Every notice and demand required or permitted under the terms of this Agreement shall be in writing and shall be sent by certified mail, return receipt requested, or by other means of delivery requiring an acknowledged receipt, to the other party's address as set forth below. All notices shall be effective upon receipt. A party may change its address by giving written notice to the other party in accordance with this **Section 12.2**:

To CLOUD PROPELLER:

Cloud Propeller, Inc.  
565 Metro Place South – Suite 300  
Dublin, OH 43017  
Attn: Petar Smilajkov (CEO)

To Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

- 12.3. **Relationship of the Parties.** Client and CLOUD PROPELLER are independent contractors, and no agency, partnership, joint venture, employer-employee or other similar relationship is intended or created by this Agreement, any ancillary agreements or use of the CLOUD PROPELLER Infrastructure or the Services.
- 12.4. **Jurisdiction Issues; Compliance with Laws.** The CLOUD PROPELLER Infrastructure and the Services are controlled, operated and administered by CLOUD PROPELLER from its office in the United States of America. CLOUD PROPELLER makes no representations that the CLOUD PROPELLER Infrastructure and Services are appropriate for use in all locations, or that products or Services are available or appropriate for sale or use in all or any jurisdictions. Those who access or use the CLOUD PROPELLER Infrastructure do so on their own initiative, and are solely responsible for compliance with all applicable laws and regulations (foreign and domestic).
- 12.5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.
- 12.6. **Binding Arbitration.** If the parties are unable to resolve a dispute that arises under this Agreement, then the dispute shall be resolved by binding arbitration in Columbus, Ohio, or at another mutually agreed location; provided, however, that nothing herein shall prohibit a party from instituting judicial proceedings to (i) compel arbitration in accordance with this agreement to arbitrate, (ii) obtain orders to require witnesses to obey subpoenas issued by the arbitrators or as may otherwise be necessary to facilitate the arbitration proceedings, (iii) seek temporary injunctive relief for the breach of this Agreement, or (iv) secure confirmation or enforcement of any arbitration award rendered pursuant to this agreement to arbitrate. Each party (A) consents to the personal jurisdiction of any state or federal court located in Columbus, Ohio (and any corresponding appellate court) in any such judicial proceeding, (B) waives any venue or inconvenient forum defense to any such proceeding maintained in such courts and (C) agrees not to initiate any such judicial proceeding in any other court. Either party may invoke this arbitration provision by providing written notice to the other party of the subject of the dispute. The arbitration shall be conducted by a panel of three (3) arbitrators selected in accordance with the commercial rules of

the American Arbitration Association (“AAA”). The parties and the arbitrators shall conduct the arbitration proceedings in accordance with the commercial rules of the AAA, except where preempted by federal statute, rule or regulation. The judgment of the arbitrators shall be final and binding upon the parties to this Agreement and may be entered in any court of competent jurisdiction. The parties shall share the costs of paying the arbitrators. Each party shall pay its own costs and attorneys’ fees.

- 12.7. **Headings.** The headings used in this Agreement are intended for convenience only. They are not a part of the written understanding between the parties, and they shall not affect the construction and interpretation thereof.
- 12.8. **No Waiver.** A party’s failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of such provision or right.
- 12.9. **Course of Conduct.** Neither the course of conduct between Client and CLOUD PROPELLER nor trade practice shall act to modify any provision of this Agreement.
- 12.10. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, in whole or in part, the remaining portions of this Agreement shall remain in full force and effect.
- 12.11. **Assignment.** CLOUD PROPELLER may assign its rights or delegate its obligations under this Agreement, without consent of Client, to any company which, directly or indirectly, owns or controls CLOUD PROPELLER, is under common ownership or control with CLOUD PROPELLER, is owned or controlled by CLOUD PROPELLER, or to any company in connection with a merger, acquisition, or sale of all or substantially all of the assets of CLOUD PROPELLER. Client may not assign its rights or delegate its obligations under this Agreement without CLOUD PROPELLER’s prior written consent.
- 12.12. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be considered an original hereof but all of which together shall constitute one agreement.
- 12.13. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter contained therein and supersedes and replaces any and all prior written or verbal agreements.
- 12.14. **Force Majeure.** Neither party shall be considered in default in the performance of any obligation hereunder to the extent that the performance of such obligation is prevented or delayed by a Force Majeure Event, which is defined to include a fire, flood, explosion, strike (except for a strike by a party’s employees), war, terrorism, insurrection, embargo, government requirement, act of civil or military authority, act of God, failure of a utility provider (e.g., power providers, voice carriers, data carriers and networks), or any similar event, occurrence or condition which is not caused, in whole or in part, by that party, and which is beyond the reasonable control of that party.
- 12.15. **No Third Party Beneficiaries.** This Agreement is entered into solely between, and may be enforced only by, Client and CLOUD PROPELLER. Except for indemnities (e.g., officers, affiliates, directors, equity holders, agents and employees of a party) to the extent provided in [Section 10](#), this Agreement shall not be deemed to create any rights or causes of action in or on behalf of any third parties, including personnel, agents, subcontractors, and clients of either party, or to create any obligations of a party to any such third parties. For the avoidance of doubt, CLOUD PROPELLER shall have no obligation under this Agreement with respect to Client’s clients to which it is reselling services or products that relate to this Agreement.

**END OF AGREEMENT**